

**ARTICLE V.**  
**AGREEMENTS AND COVENANTS**  
**OF WMI, WOODWARD AND KIFER**

SECTION 5.1. *Compliance with Securities Regulations.* WMI, Woodward and Kifer shall not sell, offer to sell or otherwise dispose of any Shares for a period of one year after the date of issuance of such Shares, whether issued on the Closing Date or issued after the Closing Date, except for the offer, sale or disposition of the Included Shares to the extent, if any, permitted by Rule 144 under the Securities Act in a transaction which, in the opinion of legal counsel (such opinion being reasonably satisfactory to Atmos), is so exempt from the registration requirements of the Securities Act. After such one-year periods, WMI, Woodward and Kifer shall not sell, offer to sell or otherwise dispose of any Shares, except (A) pursuant to an effective registration statement or (B) in a transaction which, in the opinion of legal counsel (such opinion being reasonably satisfactory to Atmos), is exempt from the registration requirements of the Securities Act. WMI, Woodward and Kifer acknowledge that certificates representing the Shares may contain a legend setting forth the restrictions that such shares may be sold only as provided herein. Notwithstanding the foregoing, the Shares may be transferred to Woodward and Kifer in the liquidation of WMI.

SECTION 5.2. *Covenant Not to Compete.*

(a) Other than in the course of performing their duties from their employment by Atmos or the LLC, WMI, J.D. Woodward and James Kifer will not, for a period of five years from and after the Closing Date (the "Non-Competition Period"), directly or indirectly (whether through WMI, any Affiliate or otherwise), engage in any of the following activities in the States of Texas and Tennessee, and all other States in which WMI or the LLC has or has had customers, to or from which WMI or the LLC has purchased or sold natural gas, or in which the other parties to the contracts of WMI or the LLC for the purchase or sale of natural gas, or any other future, option, swap or other derivative instrument in respect thereof, are or were located (collectively, the "Non-Competition Area"): (i) conduct or participate in any business or enterprise involved in purchasing and selling natural gas, entering into or trading in contracts for the purchase or sale of natural gas, and any future, option, swap or other derivative instrument in respect thereof, including the gas marketing business of providing natural gas or derivatives thereof to municipalities and industrial customers, or (ii) solicit, attempt to solicit or assist any other person or entity in soliciting or attempting to solicit customers of the business operated by WMI or the LLC prior to the Closing Date or the employees of WMI or the LLC prior to the Closing Date to cease doing any business with the LLC or ceasing their employment with the LLC. J.D. Woodward and James Kifer shall not be deemed to be so competing solely by reason of purchasing or owning securities in companies listed on the New York Stock Exchange, the American Stock Exchange, or quoted on the National Association of Securities Dealers Automatic Quotation System (NASDAQ), provided that the direct and beneficial ownership of any class of securities in any of such entities by them, together with their respective Affiliates, is less than 2% of the aggregate number of outstanding units, interests or units of such class of securities. The parties hereto expressly acknowledge and agree that (A) the agreements set forth in this Section 5.2 contain reasonable limitations as to time, geographical area and scope of activity, (B) WMI, J.D. Woodward and James Kifer have heretofore been engaged in purchasing and selling natural gas, traded in contracts for the purchase and sale of natural gas, and future,

option, swaps and other derivative instruments in respect thereof, including the gas marketing business and related activities incidental thereto, in the Non-Competition Area and (C) in light of the operations heretofore conducted by WMI, J.D. Woodward and James Kifer, the interests of the parties hereto and the nature of the transactions contemplated by this Agreement, the agreements contained in this Section 5.2 are reasonable and do not impose a greater restraint than is necessary to protect the goodwill and other business interests associated with the LLC.

However, notwithstanding the foregoing to the contrary, each of WMI, J.D. Woodward and James Kifer may continue, directly or indirectly, (1) to operate (and have ownership interests in) the gas gathering and metering systems described in Schedule 5.2 hereto and extensions thereof, (2) to conduct the oil and gas exploration and production described in Schedule 5.2 hereto, (3) buy, sell, transport or store oil and gas purchased, sold, gathered or produced through such businesses and (4) engage in trading, hedging or similar financial transactions for the oil and gas gathered, produced, transported or stored in such businesses to the extent such transactions do not interfere with the performance of their duties from their employment by Atmos or the LLC.

(b) From and after the Closing Date, WMI, J.D. Woodward and James Kifer will keep confidential and not disclose any confidential or proprietary information concerning the Acquired Assets or the LLC or its business, including any information regarding the customers of the LLC; provided that they may disclose such information if it relates to information of WMI (other than relating to the LLC) and may disclose such information of WMI or the LLC if it becomes generally available to the public other than by breach of this Section 5.2(b) or the disclosure is required by applicable law or the disclosure is in connection with the enforcement or defense of claims under this Agreement and the documents and instruments entered into in connection herewith or in connection with the employment of Woodward or Kifer by Atmos or the LLC.

(c) It is expressly understood and agreed that if any of the agreements set forth in this Section 5.2 are found to be unreasonably broad, oppressive or unenforceable in an action, suit or proceeding before any federal or state court or other governmental authority, such court or other governmental authority (i) shall narrow the Non-Competition Period or the Non-Competition Area or shall otherwise endeavor to reform the scope of such agreements in order to ensure that the application thereof is not unreasonably broad, oppressive or unenforceable and (ii) to the fullest extent permitted by law, shall enforce such agreements as so reformed.

(d) Any threatened or actual breach or violation of this Section 5.2 shall entitle Atmos or Energy to an injunction restraining any further or continued breach or violation. Such right to an injunction shall be in addition to and cumulative with (and not in lieu of) any other remedies to which Atmos or Energy may be entitled because of such breach or violation.

(e) The provisions of Section 5.2 supersede the provisions of Section 7.2 of the Transfer Restriction Agreement, which Section is hereby terminated effective as of the Closing. If this Agreement is terminated, the provisions of Section 7.2 of the Transfer Restriction Agreement shall remain applicable.

SECTION 5.3. *Rights to Name.* On the Closing Date, WMI shall change its name to a name other than "Woodward Marketing," and WMI, Woodward and Kifer will assign all of their right, title and interest in and to the name, "Woodward Marketing" or any derivation thereof, and

all goodwill associated therewith, to Energy, such assignment to be effective in perpetuity; provided that Woodward may use "Woodward Pipeline," "Woodward Development" and "Woodward Partners" and may use the name "Woodward" in any other manner that is not confusingly similar to "Woodward Marketing" for any business other than a business described in Section 5.2(a)(i).

**ARTICLE VI.**  
**AGREEMENTS AND COVENANTS**  
**OF THE ATMOS ENTITIES**

**SECTION 6.1. *Access to Information; Confidentiality.***

(a) From the date hereof to the Closing Date, the Atmos Entities will, and will cause their respective directors, managers, officers, employees and agents to, permit and afford WMI, Woodward and Kifer and their respective representatives reasonable access at all reasonable times and with reasonable prior notice to the employees, offices, properties, books and records of the Atmos Entities for a due diligence review and will furnish WMI, Woodward and Kifer with all information of the Atmos Entities as WMI, Woodward or Kifer may reasonably request.

(b) The Atmos Entities acknowledge that they may receive or have received from WMI, Woodward or Kifer information and data regarding WMI, Woodward or Kifer that is non-public and proprietary in nature. The Atmos Entities agree to hold in confidence all such information and data and shall ensure that their respective directors, managers, officers, employees and agents do not disclose such information and data to others without the prior written consent of WMI, Woodward or Kifer, as the case may be. In the event that this Agreement is terminated, upon receipt of a written request, the Atmos Entities will return to WMI, Woodward or Kifer, as the case may be, all such documents and other material (and all copies thereof) obtained from WMI, Woodward or Kifer in connection with the transactions contemplated hereby and will destroy all such documents and other material prepared by the Atmos Entities or their respective agents, representatives or advisors that reflect non-public information received by the Atmos Entities in connection with the transactions contemplated hereby.

**SECTION 6.2. *Employees and Employee Benefits.***

(a) As of the Closing Date, the employees of the LLC other than J.D. Woodward shall continue as employees of the LLC. Subject to contractual obligations disclosed in the WMI Disclosure Schedule, such employees' salaries or wages, benefits, job titles and job duties from and after the Closing Date will be determined by the LLC in its sole discretion. Subject to contractual obligations, such employees will be employed with the LLC on an "at will" basis.

(b) Atmos will retain J.D. Woodward and will cause the LLC to amend the terms of retention of James Kifer, each as employees, and Messrs. Woodward and Kifer agree to such retention as employees, beginning with the Closing Date. Subject to contractual obligations, such employees will be employed with Atmos or the LLC, as the case may be, on an "at will" basis. The specific terms of employment (which shall supersede the current terms of employment as of the Closing Date) are set forth in Exhibits C and D, respectively. The terms

and conditions contained in Exhibit C are intended to be similar to those applicable to other employees of Atmos of comparable qualifications and experience. Moreover, the LLC will enter into change in control agreements with the employees of the LLC who have been identified as "Key Employees" by WMI and agreed to by Atmos, beginning with the Closing Date. The specific terms of such change in control agreements shall be mutually acceptable to Atmos and Woodward.

(c) Atmos will cause the LLC initially to provide compensation and benefits substantially comparable in the aggregate to that currently provided by the LLC to its employees, except for the Woodward Marketing, L.L.C. Performance Plan ("Performance Plan"). The rights of the existing LLC employees to benefits on or after the Closing Date shall be governed by the terms, as may be amended or modified from time to time, of any LLC plan or program in which they may participate, and such employees will have no rights in or claims against Atmos' welfare, pension or retirement plans as of the Closing Date. Such employees will not participate in the Atmos Total Rewards program. On or prior to the Closing, the Performance Plan will be terminated and payments to participants therein will be made by the LLC in accordance with the accrued amounts provided in the Financial Statements therefor. Neither Woodward nor Kifer are or will be participants under the Performance Plan. After the Closing, the Atmos Entities will cause the LLC to adopt an incentive compensation program for LLC employees as shall be mutually acceptable to Atmos and Woodward.

(d) It is expressly understood by the parties hereto that Atmos assumes no responsibility, and makes no commitment, for the maintenance and continuation, after the Closing, of any Plan or Employee Benefit Arrangement previously adopted or maintained by the LLC or any Group Member, or for any continued employment or the terms and conditions of any employment for any of the LLC's employees.

SECTION 6.3. *Registration Rights.* Atmos agrees to enter into a registration rights agreement with Woodward and Kifer on the Closing Date, providing certain "piggy-back" registration rights, in substantially the form of Exhibit E attached hereto (the "Registration Rights Agreement").

## **ARTICLE VII.**

### **MUTUAL AGREEMENTS AND COVENANTS OF THE ATMOS ENTITIES, WMI AND WOODWARD AND KIFER**

#### **SECTION 7.1. *Consents and Approvals.***

(a) Each of the parties hereto shall use all reasonable efforts to obtain all consents, waivers, approvals, authorizations, opinions and orders of all third parties (including attorneys and accountants) and local, state and federal governmental authorities (including, but not limited to, the approvals of the Colorado Public Utilities Commission, Georgia Public Service Commission, Kentucky Public Service Commission, Illinois Corporation Commission, Tennessee Regulatory Authority, and the Virginia Corporation Commission referred to in Sections 1.6 and 3.5 above) required in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Each of the parties hereto shall attend all proceedings of, and file all documents with the Colorado Public

Utilities Commission, Georgia Public Service Commission, Kentucky Public Service Commission, Illinois Corporation Commission, Tennessee Regulatory Authority, and the Virginia Corporation Commission as reasonably necessary to obtain each of such commissions' approval of the purchase of the Acquired Assets and/or the issuance of the Shares. Each of the parties hereto shall also reasonably cooperate with and assist each of the other parties hereto in all proceedings before and in the preparation and filing of any documents they are required to file with the Colorado Public Utilities Commission, Georgia Public Service Commission, Kentucky Public Service Commission, Illinois Corporation Commission, Tennessee Regulatory Authority, and the Virginia Corporation Commission.

(b) Each of the parties hereto shall, as soon as reasonably practicable after the date of this Agreement, file any Notification and Report Forms and related material that they may be required to file with the Federal Trade Commission and the Antitrust Division of the Department of Justice under the Hart-Scott-Rodino Act, shall use their respective reasonable efforts to obtain an early termination of the applicable waiting period and shall make any further filings pursuant thereto that may be necessary, proper or advisable and respond as promptly as practicable to all inquiries received from the Federal Trade Commission or the Antitrust Division of the Department of Justice for additional information or documentation.

(c) The parties hereto shall have the right to review in advance all characterizations of the information relating to this Agreement and the transactions contemplated hereby that appear in any filing made as contemplated herein.

**SECTION 7.2. *Distributions.*** The parties agree to the following distributions:

(a) In recognition of changes in distribution restrictions imposed by lenders to the LLC, the parties hereto agree that they shall cause Energy and WMI to approve monthly distributions of cash by the LLC to its members from the date hereof through the Closing equal to the aggregate amount of net income (adjusted to disregard unrealized gains and losses resulting from the marked to market forward positions as of the end of each month) of the LLC for each month beginning on May 1, 2000 and ending on the close of business on the date preceding the Closing, that have not been previously distributed and that can be distributed from the cash flow of the LLC subsequent to April 30, 2000 without requiring capital contributions or borrowings (the "Ordinary Cash Distributions"). The amount of the Ordinary Cash Distributions shall be estimated by Atmos and WMI in good faith and paid by the LLC within 75 days after the end of each such month or, in the case of the month in which the Closing occurs, within 75 days after the Closing. Any true-up adjustments shall be paid as provided in Section 7.2(c), subject to the right of WMI, Woodward and Kifer (and their respective representatives) to review the books and records of the LLC with respect to such calculations.

(b) As soon as practicable but not later than seventy-five (75) days following the Closing Date, Atmos shall prepare and deliver to WMI, Woodward and Kifer a certificate showing the calculation of the Ordinary Cash Distributions of the LLC through the close of business on the date preceding the Closing Date ("Actual Amount"), together with reasonably detailed substantiation therefor. In the absence of notice of objection or exercise of review rights within ninety (90) days after the delivery of such certificate and substantiation, the amount reflected in such certificate will be deemed accepted.

In the event Woodward and Kifer dispute the certificate, they shall provide written notification of objection within such ninety (90) day period (or, if a review is requested, within sixty (60) days after commencement of such review and, for a period of thirty (30) days after such notification (or expiration of such sixty (60) day period, as the case may be), Woodward and Kifer and Atmos shall attempt to resolve the dispute in good faith by mutual agreement. If a review is requested, Atmos agrees to cooperate in good faith to facilitate such review of the books and records of the LLC. When the parties are in agreement, any adjustment to the payment shall be calculated and, prior to the end of the next calendar month, paid.

**SECTION 7.3. *Notice of Certain Events.*** Each of the parties hereto shall give prompt written notice to the other parties of (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which would be likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate and (ii) any failure of such party to comply with or satisfy any term, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 7.3 shall not limit or otherwise affect the remedies available hereunder to the other parties hereto.

**SECTION 7.4. *Reorganization.*** Each party hereto shall treat the sale of the Acquired Assets contemplated hereby for income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. From and after the date hereof, no party to this Agreement shall take any action, or fail to take any action, that would, in the reasonable determination of such party (in the case of the Atmos Entities, by the chief financial officer of Atmos, and in the case of WMI, Woodward and Kifer, by J.D. Woodward), jeopardize qualification of such sale as a reorganization within the meaning of Section 368(a) of the Code, including, for a period of at least two years from the Closing, the agreement of Atmos and its Affiliates to (i) refrain from making a contribution of capital to the LLC other than capital contributions in the ordinary course of business, with respect to any post-Closing acquisitions, expansions, or investments, or otherwise approved by J.D. Woodward as the executive officer in charge of the non-utility operations of Atmos, and (ii) not repay any debt of the LLC existing as of the Closing Date other than in the ordinary course of business of the LLC or otherwise in connection with a refinancing of such debt by the LLC.

**SECTION 7.5. *Expenses.*** Except as otherwise expressly set forth herein, WMI, Woodward, Kifer, and the Atmos Entities shall each be responsible for, and will pay, his or its own legal, accounting and other expenses incurred in connection with the preparation and negotiations of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby. The LLC shall not pay or be liable for any such expenses.

**SECTION 7.6. *Tax Controversies.***

(a) In the case of an audit, claim or other action taken or proposed to be taken by the IRS or any other taxing authority or agency (a "Tax Agency") with respect to the Tax Returns of the Atmos Entities relating to the tax consequences of the transactions contemplated hereby, the Atmos Entities shall have the right to defend or contest such audit, claim or other action and to exercise complete control of the defense of such audit, claim or other action; provided, however, that the Atmos Entities shall not take a position in connection with such audit, claim or other

action inconsistent with the treatment of the transactions contemplated hereby as a tax-free reorganization. WMI, Woodward and Kifer will cooperate with the Atmos Entities or their representatives in the defense or contest of such audit, claim or other action.

(b) In the case of an audit, claim or other action taken or proposed to be taken by a Tax Agency with respect to the Tax Returns of the LLC for any period prior to or including the Closing Date, WMI, Woodward and Kifer shall have the right to defend or contest such audit, claim or other action and to exercise control of the defense of such audit, claim or other action, except to the extent Atmos, Energy or (from and after the Closing Date) the LLC has any liability not fully covered by indemnification of WMI, Woodward and Kifer hereunder; provided, however, that WMI, Woodward and Kifer shall not take a position in connection with such audit, claim or other action inconsistent with the treatment of the transactions contemplated hereby as a tax-free reorganization. The Atmos Entities will cooperate with WMI, Woodward and Kifer or their representatives in the defense or contest of such audit, claim or other action.

(c) Between the date hereof and the Closing Date, to the extent Woodward, Kifer or WMI has Knowledge of the commencement or scheduling of any Tax audit, the assessment of any Tax, the issuance of any notice of Tax due or any bill for collection of Tax due, or the commencement or scheduling of any other administrative or judicial proceeding with respect to the determination, assessment or collection of any Tax of the LLC, Woodward, Kifer or WMI, as appropriate, shall provide prompt notice to Atmos and Energy of such matter, setting forth information (to the extent known) describing any asserted Tax liability in reasonable detail and including copies of any notice or other documentation received from the applicable Tax authority with respect to such matter.

**SECTION 7.7. *Access to Records Following Closing.*** Woodward, Kifer, the LLC, and the Atmos Entities agree that so long as any books, records and files retained by WMI, Woodward or Kifer relating to the business of WMI or the LLC, or retained by the Atmos Entities, WMI or the LLC relating to the business of WMI or the LLC, or the books, records and files delivered to the control of the Atmos Entities pursuant to this Agreement to the extent they relate to the operations of WMI or the LLC prior to the Closing Date, remain in existence and are available, each party (at its expense) shall have the right upon prior notice to inspect and to make copies of the same at any time during business hours for any proper purpose. Woodward, Kifer, the LLC, and the Atmos Entities and WMI shall use reasonable efforts not to destroy or allow the destruction of any such books, records and files without first offering in writing to deliver them to the other.

**SECTION 7.8. *Tax Credits, Tax Refunds and Amended Tax Returns.***

(a) If in any period ending after the Closing Date, the Atmos Entities or LLC earns any credit or recognizes any loss which cannot be applied against its Tax liability for such period, and is permitted by law to carry back such credit or loss to a period ending on or prior to the Closing Date, and if WMI, Woodward and Kifer shall receive a Tax Benefit for the period to which such credit or loss is properly carried back, then WMI, Woodward and Kifer shall, within thirty (30) days following the receipt of such Tax Benefit, remit to the LLC the amount of such Tax Benefit resulting from such carryback of credit or loss. WMI, Woodward and Kifer agree that they will cooperate with the Atmos Entities and the LLC and their respective

representatives, in a prompt and timely manner, in connection with (i) the preparation and filing of, and (ii) any administrative or judicial proceedings involving, any Tax Return or information filed or required to be filed by or for the LLC or the Atmos Entities.

(b) If WMI, Woodward or Kifer receives a Tax Benefit with respect to WMI or WMI's share of Taxes arising from the LLC in the Tax periods ending after the Closing Date (including all Tax periods that begin before and end after the Closing Date, but in such situation, only the portion of such period after the Closing Date), WMI, Woodward and Kifer shall, within thirty (30) days following the receipt of such Tax Benefit, pay the amount of such Tax Benefit to Atmos. WMI and, to the extent of their respective Prorata shares thereof (and only to such extent), Woodward and Kifer shall have joint and several liability for the amount required to be paid to Atmos in the foregoing sentence.

(c) Subject to Section 7.10(a), any amended Tax Return or claim for Tax refund for any Tax period of WMI shall be filed, or cause to be filed, only by Woodward and Kifer. Woodward and Kifer shall not without the prior written consent of Atmos (which consent shall not be unreasonably withheld or delayed, make or cause to be made, any such filing, to the extent such filing, if accepted, reasonably might adversely change the Tax liability of the Atmos Entities or any of Atmos' Subsidiaries or Affiliates for any Tax period.

SECTION 7.9. *Further Action.* Upon the terms and subject to the conditions hereof, each of the parties hereto shall (i) promptly make its respective filings and thereafter make any other required submissions, and (ii) use all reasonable efforts to take, or cause to be taken, all appropriate action, and to do or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, using all reasonable efforts to obtain all licenses, permits, consents, approvals, authorizations, qualifications and orders of governmental authorities and parties to contracts with the Atmos Entities, the LLC and WMI as are necessary for the consummation of the transactions contemplated by this Agreement. In case at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this Agreement, the parties to this Agreement shall use all reasonable efforts to take all such necessary action.

SECTION 7.10. *Lease Agreement.* The Atmos Entities agree to cause the LLC to enter, and WMI agrees to cause Woodward Development, Inc. to enter, into a lease with respect to the office space and Woodward Pipeline, Inc. ("WPI") to enter into a lease with respect to the furniture, fixtures and equipment owned by WPI located therein on substantially the terms and conditions in effect on the date hereof, which are described in Exhibit F hereto.

SECTION 7.11. *Public Announcements.* Between the date of this Agreement and the Closing Date, each of the parties hereto and any of its directors, managers, officers, employees, agents or representatives shall not issue any press release or otherwise make any public statements with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other party; provided, however, that each party reserves the right to make such statements to regulatory authorities in the ordinary course of business or as are required, in the opinion of its counsel, by applicable law or the rules of any stock exchange.



SECTION 7.12. *Termination of Certain Agreements.* As of the Closing Date, the Transfer Restriction Agreement is terminated and the parties thereto are hereby released from any further rights or obligations under any of the provisions thereof. No party hereto shall exercise any right under Article III of the Transfer Restriction Agreement prior to the Closing Date, unless this Agreement is terminated pursuant to Article X.

## ARTICLE VIII. CONDITIONS TO CLOSING

SECTION 8.1. *Conditions to Obligations of Each Party to Close.* The respective obligations of each party to effect the closing of the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of the following conditions, except to the extent that such conditions are waived in writing by Atmos and WMI:

(a) *Utility Commission Approvals.* All necessary approvals of the Colorado Public Utilities Commission, Georgia Public Service Commission, Kentucky Public Service Commission, Illinois Corporation Commission, Tennessee Regulatory Authority, and the Virginia Corporation Commission shall have been granted by final order and such orders shall not contain any condition which would reasonably be expected to have a Material Adverse Effect on any of the parties hereto or the LLC, including a Material Adverse Effect on the current rate structure of any Atmos business unit regulated thereby;

(b) *Hart-Scott-Rodino Act.* The waiting period (and any extension thereof) applicable to the consummation of the transactions contemplated hereby under the Hart-Scott-Rodino Act shall have expired or been terminated; and

(c) *No Order.* No United States or state governmental authority or other agency or commission or United States or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which in effect restricts, prevents or prohibits consummation of the transactions contemplated by this Agreement.

SECTION 8.2. *Additional Conditions to Obligations of Atmos and Energy.* The obligations of Atmos to issue the Shares and of the Atmos Entities to effect the closing of the transactions contemplated hereby are, at the option of Atmos and Energy, also subject to the satisfaction at or prior to the Closing Date of the following conditions, except to the extent that such conditions are waived in writing by Atmos and Energy:

(a) *Representations and Warranties.* The representations and warranties of WMI, Woodward and Kifer contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as if made at and as of the Closing Date except for changes that are permitted or contemplated by this Agreement, and Atmos and Energy shall have received a certificate signed by the Chief Executive Officer and the Chief Financial Officer of WMI and by Woodward and Kifer, in their respective individual capacities, and dated as of the Closing Date to that effect;

(b) *Agreements and Covenants.* WMI, Woodward and Kifer shall each have performed or complied in all material respects with all agreements and covenants required by

this Agreement to be performed or complied with by it or him at or prior to the Closing Date, and Atmos and Energy shall have received a certificate signed by the Chief Executive Officer of WMI and by Woodward and Kifer, in their respective individual capacities, and dated as of the Closing Date to that effect;

(c) *Consents Obtained.* All material consents and waivers required to be obtained by WMI, the LLC, Woodward or Kifer for the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby shall have been obtained in form and substance satisfactory to Atmos;

(d) *Material Adverse Changes.* Since the date of this Agreement, there shall have occurred no Material Adverse Effect on the LLC;

(e) *Litigation.* No action, suit or proceeding shall be pending against any of the parties hereto or Known to be threatened before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements, (ii) cause any of the transactions contemplated by this Agreement or the Ancillary Agreements to be rescinded following consummation, (iii) have a Material Adverse Effect on the right of Atmos or Energy to own the assets and to operate the business of the LLC in a manner consistent with present practice, or (iv) have a Material Adverse Effect on the right of the LLC to own its assets and to operate its business (and no such injunction, judgment, order, decree, ruling or charge shall be in effect);

(f) *Opinion of WMI's and Woodward and Kifer's Counsel.* Atmos and Energy shall have received an opinion of LeBoeuf, Lamb, Greene & MacRae, L.L.P., counsel to WMI, Woodward and Kifer, dated as of the Closing Date substantially in the form and to the effect set forth in Exhibit G hereto; and

(g) *Deliveries.* Each of WMI, Woodward and Kifer shall have executed and delivered each Ancillary Agreement to which it is a signatory and shall have delivered all other documents and items contemplated in Section 9.3 or elsewhere in this Agreement.

SECTION 8.3. *Additional Conditions to Obligations of WMI, Woodward and Kifer.* The obligations of WMI, Woodward and Kifer to effect the closing of the transactions contemplated hereby are, at the option of WMI, Woodward and Kifer, also subject to the satisfaction at or prior to the Closing Date of the following conditions, except to the extent that such conditions are waived in writing by WMI, Woodward and Kifer:

(a) *Representations and Warranties.* The representations and warranties of the Atmos Entities contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as if made at and as of the Closing Date except for changes that are permitted or contemplated by this Agreement, and WMI, Woodward and Kifer shall have received certificates signed by the Presidents or Chief Financial Officers of the Atmos Entities and dated as of the Closing Date to that effect;

(b) *Agreements and Covenants.* The Atmos Entities shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing Date and WMI, Woodward and Kifer shall have received certificates signed by the Presidents or Chief Financial Officers of the Atmos Entities and dated as of the Closing Date to that effect;

(c) *Consents Obtained.* All material consents, waivers, approvals, authorizations or orders required to be obtained by Atmos and Energy for the authorization, execution and delivery of this Agreement and the Ancillary Agreements and the consummation by them of the transactions contemplated hereby and thereby shall have been obtained in form and substance satisfactory to WMI, Woodward and Kifer;

(d) *Material Adverse Changes.* Since the date of this Agreement, there shall have occurred no Material Adverse Effect on Atmos and its Subsidiaries, taken as a whole;

(e) *Opinion of the Atmos Entities' Counsel.* Woodward and Kifer shall have received an opinion of Gibson, Dunn & Crutcher LLP, counsel to the Atmos Entities, dated as of the Closing Date substantially in the form and to the effect set forth in Exhibit H hereto;

(f) *Registration Rights Agreement.* WMI, Woodward and Kifer shall have received a counterpart of the Registration Rights Agreement duly executed by Atmos;

(g) *Certain Guaranties.* (i) The bank lenders to the LLC shall have released WMI, Woodward and Kifer from any personal liability for, or guarantee of, or other security arrangement for, the notes, debts and obligations of the LLC to such lenders, or (ii) all indebtedness of the LLC to such banks shall have been repaid and the related credit facilities terminated and WMI, Woodward and Kifer shall have received an indemnity from Atmos, reasonably satisfactory to them, from all obligations in respect of such indebtedness. If Woodward or Kifer has delivered any other guarantees for the benefit of the LLC, the release of such guarantees shall also have been obtained or the guaranteed obligations satisfied and a similar indemnity provided;

(h) *Litigation.* No action, suit or proceeding shall be pending against any of the parties hereto or Known to be threatened before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements, (ii) cause any of the transactions contemplated by this Agreement or the Ancillary Agreements to be rescinded following consummation, (iii) have a Material Adverse Effect on the right of Atmos or Energy to own the assets and to operate the business of the LLC in a manner consistent with present practice, or (iv) have a Material Adverse Effect on the right of the LLC to own its assets and to operate its business (and no such injunction, judgment, order, decree, ruling or charge shall be in effect); and

(i) *Deliveries.* Each of the Atmos Entities shall have executed and delivered each Ancillary Agreement to which it is a signatory and shall have delivered all other documents and items contemplated in Section 9.4 or elsewhere in this Agreement.

**ARTICLE IX.  
CLOSING AND CLOSING DATE  
OF THE MERGER**

SECTION 9.1. *Closing.* The closing of the sale of the Acquired Assets, the issuance of the Shares and the other transactions contemplated hereby (the "Closing") shall take place either at (i) the offices of Gibson, Dunn & Crutcher LLP in Dallas, Texas at 10:00 a.m. Central Time on the fifth Business Day following the date on which the last of the conditions to the consummation of the Closing that are to be fulfilled or waived in writing, as set forth in Article VIII of this Agreement (other than those conditions, such as deliveries, that by their nature are to be fulfilled at the Closing, but subject to the fulfillment or waiver of such conditions) are fulfilled or waived in accordance with this Agreement or (ii) such other time and place and on such other date as the parties hereto shall agree in writing (the "Closing Date").

SECTION 9.2. *Principal Deliveries.* At the Closing:

(a) WMI will deliver to Energy instruments of assignment and transfer for the Acquired Assets, reasonably satisfactory to Atmos, together with one or more certificates representing 345,500 shares of Common Stock (duly endorsed or accompanied by stock powers duly signed in blank), and Energy will deliver to WMI an instrument of assumption of the Assumed Obligations, reasonably satisfactory to WMI; and

(b) Atmos will deliver, or cause to be delivered, to WMI (or at its request to Woodward and Kifer Prorata) one or more certificates representing the Base Shares, the Included Shares and the Cumulative Shares.

SECTION 9.3. *Other Deliveries of WMI.* At the Closing, WMI will deliver to Atmos the materials listed in this Section 9.3 or otherwise contemplated by this Agreement including the following:

(a) A certificate, dated the Closing Date, signed by the Secretary or Assistant Secretary of WMI certifying as to the (i) Articles of Incorporation of WMI, as amended, (ii) Bylaws of WMI, as amended; (iii) incumbency and signatures of signing officers of WMI; and (iv) adoption and continued effect of the resolutions of WMI's stockholders and board of directors approving and authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which WMI is a party and the transactions contemplated hereby.

(b) A certificate from the Secretary of State of the State of Texas, dated not more than five Business Days prior to the Closing Date, certifying as to the good standing of WMI.

(c) Written evidence satisfactory in form and substance to Atmos that all material consents or approvals necessary to permit WMI to execute, deliver and perform this Agreement and the Ancillary Agreements have been obtained and are final.

(d) All other documents, instruments and writings required by this Agreement and the Ancillary Agreements to be delivered by WMI, Woodward or Kifer at or prior to the Closing.

SECTION 9.4. *Other Deliveries of the Atmos Entities.* At the Closing, the Atmos Entities will deliver to WMI, Woodward and Kifer the materials listed in this Section 9.4 or otherwise contemplated by this Agreement including the following:

(a) Certificates, dated the Closing Date, signed by the Secretary or Assistant Secretary of the Atmos Entities certifying as to the (i) Articles of Incorporation of Atmos and of Certificate of Formation of Energy, each as amended; (ii) Bylaws of Atmos and the Limited Liability Company Agreement of Energy, each as amended; (iii) incumbency and signatures of signing officers of the Atmos Entities; and (iv) adoption and continued effect of the resolutions of the board of directors of Atmos, and of the managers and member of Energy approving and authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which they are signatories, the transactions contemplated hereby and, in the case of Atmos, the issuance of the Shares.

(b) Certificates from the Secretary of State of the states of their respective organization, dated not more than five Business Days prior to the Closing Date, certifying as to the good standing of the Atmos and Energy.

(c) Written evidence satisfactory in form and substance to WMI that all material consents or approvals necessary to permit the Atmos Entities to execute, deliver and perform this Agreement and the Ancillary Agreements have been obtained and are final.

(d) All other documents, instruments and writings required by this Agreement and the Ancillary Agreements to be delivered by the Atmos Entities at or prior to the Closing.

SECTION 9.5. *Further Assurances.* At any time and from time to time after the Closing Date, upon the request of Energy and without any cost or expense thereto, WMI shall execute and deliver such instruments of conveyance, assignment and transfer and other documents as Energy may reasonably request to transfer to and vest in Energy, and to put Energy in possession of, any Acquired Assets or otherwise to carry out the intent and purpose of this Agreement.

SECTION 9.6. *Transfer and Other Taxes.* At the Closing, WMI and Energy shall each pay one-half of any state or local sales and use, ad valorem or similar transfer-type Taxes ("Transfer Taxes") and recording charges in connection with the conveyance, assignment, or transfer of the Acquired Assets. If the final amount of any such Transfer Taxes or recording charge are not determinable on the Closing Date, WMI and Energy shall pay such Transfer Taxes or recording charge on the Closing Date based upon the estimated amount thereof and shall thereafter pay any balance of such Transfer Taxes or recording charge as soon as it becomes determinable.

## **ARTICLE X. TERMINATION, AMENDMENT AND WAIVER**

SECTION 10.1. *Termination.* This Agreement may be terminated at any time prior to the Closing Date:

(a) by mutual written consent duly authorized by the boards of directors of Atmos and WMI, the managers of Energy and by Woodward and Kifer; or

(b) by written notice from Atmos, Energy, WMI, Woodward or Kifer if the Closing shall not have been consummated on or before February 28, 2001 (except that this date shall be December 31, 2001 if, on February 28, 2001, the conditions to the Closing set forth in Section 8.1(a) shall not have been fulfilled but the Closing Date would otherwise occur) or such later date as may be agreed to in writing by the parties; provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose willful failure to fulfill any material obligation under this Agreement has been the cause of or resulted in the failure of the Closing Date to occur on or before such date; or

(c) by written notice from Atmos, Energy, WMI, Woodward or Kifer if any condition to the obligations of such party as set forth in Article VIII of this Agreement has not been met or performed as of the Closing Date and such condition shall not have been waived in writing by such party; provided, however, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to any party whose willful failure to fulfill any material obligation under this Agreement has been the cause of or resulted in the failure of such condition to be met or performed on or before such date; or

(d) by written notice from Atmos or Energy if Woodward or Kifer dies or becomes "disabled" for more than 180 days, within the meaning of the term "disabled" as defined in the Atmos Long-Term Disability Plan in effect at the Closing Date; or

(e) by written notice from Atmos, Energy, WMI, Woodward or Kifer if (i) any Governmental Body, the consent of which is a condition to the obligations of the parties to consummate the Closing, shall have determined not to grant its or their consent and all appeals of such determination shall have been taken and have been unsuccessful, (ii) one or more courts of competent jurisdiction in the United States or any state shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and nonappealable or (iii) any statute, rule or regulation shall have been enacted by any state or Federal government or governmental agency in the United States which prohibits the consummation of the Closing.

**SECTION 10.2. *Effect of Termination.*** In the event of the termination of this Agreement pursuant to Section 10.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto, provided, however, that nothing herein shall relieve any party from liability for any willful breach hereof.

**SECTION 10.3. *Amendment.*** This Agreement may be amended by mutual action taken by or on behalf of the respective boards of directors of Atmos or WMI or the managers of Energy and by Woodward and Kifer at any time prior to the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

**SECTION 10.4. *Waiver.*** At any time prior to the Closing Date, any party hereto may (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions contained herein of which it is the beneficiary. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby

and shall be applicable only with respect to the particular condition or provision as extended or waived and not to any other condition or provision herein.

## ARTICLE XI. INDEMNIFICATION

SECTION 11.1. *Indemnification by Woodward and Kifer.* WMI and, to the extent of their respective Prorata shares thereof (and only to such extent), Woodward and Kifer, jointly and severally, shall indemnify and hold harmless the Atmos Entities and their respective representatives, Affiliates, successors and assigns (collectively, the "Atmos Indemnified Persons") for, and will pay to the Atmos Indemnified Persons the amount of any loss, liability, claim, damage, or expense (including costs of investigation and defense and reasonable attorneys' fees) or diminution of value, whether or not involving a third-party claim (collectively, "Damages"), incurred by an Atmos Indemnified Person arising from:

(a) any inaccuracy or breach of any representation or warranty made by WMI, Woodward or Kifer in this Agreement or any other certificate or document delivered by any of them to the Atmos Entities pursuant to this Agreement (other than in respect of Taxes, which are addressed in Section 11.2);

(b) any breach by WMI, Woodward or Kifer of any covenant or obligation of any of them in this Agreement to the extent performable prior to the Closing ("WMI Pre-Closing Covenant");

(c) any breach by WMI, Woodward or Kifer of any other covenant or obligation of either of them in this Agreement; or

(d) any Retained Liabilities;

provided, however, that, (x) in the case of any Damages arising under clause (a) or (b) of this Section 11.1, other than in respect of the representations and warranties in Sections 1.3 and 2.4, ("Certain Indemnifiable Damages"), (1) such indemnification shall be effective only with respect to claims written notice of which (specifying the factual basis of any claim in reasonable detail) is received by Woodward and Kifer from Atmos or Energy no later than eighteen months after the Closing Date, and (2) no amounts shall be due and payable until the aggregate amount of the Certain Indemnifiable Damages is equal to at least \$250,000, with no amounts being due and payable for any amounts that in the aggregate are less than such \$250,000 deductible, and (y) in no event shall the aggregate amount of all payments made by WMI, Woodward and Kifer, taken together, in respect of Certain Indemnifiable Damages exceed an aggregate of \$4,000,000. Notwithstanding the foregoing, if the claim for Damages relates to a breach of representation, warranty or covenant in Articles II or V by Woodward or Kifer or with respect to shares of WMI stock owned by Woodward or Kifer or Shares acquired by Woodward or Kifer upon the liquidation of WMI, the indemnity herein with respect to such breach shall not be borne Prorata but shall be borne entirely by whichever of Woodward or Kifer caused the breach.

SECTION 11.2. *Tax Indemnification.*

(a) From and after the Closing Date, WMI, Woodward and Kifer, jointly and severally, shall protect, defend, indemnify and hold harmless the Atmos Indemnified Persons from any and all Taxes imposed on an Atmos Indemnified Person in respect of WMI's income, business, property or operations or for which WMI may otherwise be liable (i) for any taxable period of WMI, including any Taxes other than one-half of the Transfer Taxes in connection with the transactions contemplated hereby, or (ii) for WMI's allocable portion of the income or gain of the LLC in respect of any taxable period ending on or prior to the Closing Date, or (iii) resulting from the breach of Woodward's or Kifer's representations and warranties set forth in Section 1.14 of this Agreement.

(b) WMI's distributive share of the LLC's income, gain, loss or deduction for the taxable year of the LLC that includes the Closing Date shall be determined on the basis of an interim closing of the books of the LLC as of the close of business on the Closing Date and shall not be based on a proration of such items for the entire taxable year.

SECTION 11.3. *Indemnification by Atmos.* The Atmos Entities, jointly and severally, shall indemnify and hold harmless WMI, Woodward and Kifer, and their respective representatives, Affiliates, successors and assigns (collectively, the "Woodward Indemnified Persons") for, and will pay to the Woodward Indemnified Persons the amount of any Damages arising from:

(a) any inaccuracy or breach of any representation or warranty made by the Atmos Entities in this Agreement or in any certificate or document delivered by the Atmos Entities to WMI, Woodward or Kifer pursuant to this Agreement;

(b) any breach by the Atmos Entities of any covenant or obligation of the Atmos Entities in this Agreement to the extent performable prior to the Closing ("Atmos Pre-Closing Covenant"); or

(c) any breach by the Atmos Entities of any other covenant or obligation of the Atmos Entities in this Agreement;

provided, however, that (x) in the case of any Damages arising under clause(a) or (b) of this Section 11.3 ("Certain Indemnifiable Losses"), (1) such indemnification shall remain in effect only with respect to claims written notice of which (specifying the factual basis of any claim in reasonable detail) is received by Atmos from Woodward or Kifer no later than eighteen months after the Closing Date, and (2) no amounts shall be due and payable until the aggregate amount of Certain Indemnifiable Losses is equal to at least \$250,000, with no amounts being due and payable for any amounts that in the aggregate are less than such \$250,000 deductible, and (y) in no event shall the aggregate amount of all payments made by Atmos, taken together, in respect of Certain Indemnifiable Losses exceed an aggregate of \$4,000,000.

SECTION 11.4. *Procedure for Indemnification - Third Party Claims.*

(a) Promptly after receipt by an indemnified party under Section 11.1, 11.2 or 11.3 of notice of the commencement of any action, suit, arbitration, investigation or other proceeding



(each a "Proceeding") against it, such indemnified party shall, if a claim is to be made against an indemnifying party under such section, give written notice to the indemnifying party of the commencement of such claim, but the failure to notify the indemnifying party shall not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnified party's failure to give such notice. Such notice shall describe the nature of the claim in reasonable detail, including a copy of the claim if such claim was made in writing, and will indicate the estimated amount, if practicable, of the Damages that have been or may be sustained by the indemnified party.

(b) If any Proceeding referred to in Section 11.4(a) is brought against an indemnified party, the indemnifying party shall, unless the claim involves Taxes, be entitled to participate in such Proceeding and, to the extent that it wishes to assume the defense of such Proceeding with counsel reasonably satisfactory to the indemnified party and, after notice from the indemnifying party to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying party shall not, as long as it diligently conducts such defense, be liable to the indemnified party under this Section 11.4 for any fees of other counsel (including the indemnified party's counsel) or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the indemnified party in connection with the defense of such Proceeding, other than reasonable costs of investigation. If the indemnifying party assumes the defense of a Proceeding, (i) it shall be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of and subject to indemnification; (ii) no compromise or settlement of such claims may be effected by the indemnifying party without the indemnified party's consent unless (A) there is no finding or admission of any violation of legal requirements or any violation of the rights of any person and no effect on any other claims that may be made against the indemnified party or the settlement includes a complete and unconditional release of the indemnified party with respect to the third party's claims in the Proceeding, and (B) the sole relief provided is monetary damages that are paid in full by the indemnifying party; and (iii) the indemnified party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If the indemnified party desires to participate in, but not control, any such defense or settlement the indemnified party may do so at its sole cost and expense. The indemnified party shall cooperate with the indemnifying party's defense against any third party claim. If written notice as described in Section 11.4(a) is given to an indemnifying party of the commencement of any Proceeding and the indemnifying party does not, within twenty (20) days after the indemnified party's notice is given, give notice to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying party will be bound by any determination made in such Proceeding or any compromise or settlement effected by the indemnified party, subject to the provisions of this Article XI.

(c) All references in Sections 11.4 or 11.5 to items being at the cost or expense of the indemnifying party, or words of similar import, shall in no way limit the recovery of the indemnified party under the other provisions of Article XI.

SECTION 11.5. *Procedure for Indemnification - Other Claims.* A claim for indemnification for any other matter not involving a third-party claim may be asserted by written notice to the party from whom indemnification is sought given prior to the expiration of the

indemnification notice period, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than forty-five (45) days after the indemnified party becomes aware of such claim (provided that the failure to notify the indemnifying party shall not relieve the indemnifying party of any liability it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such claim is prejudiced by the indemnified party's failure to give such notice), and the indemnifying party will have a period of ninety (90) days within which to respond to such claim, specifying the portion of the claim that is disputed and the basis for such position. If the indemnifying party does not respond within such ninety (90) day period the indemnifying party will be deemed to have accepted such claim (subject to the other provisions of this Article XI). If the indemnifying party responds within such ninety (90) day period, the indemnifying party will be deemed to have accepted and be liable for payment of the undisputed portion of such claim, if any, on demand (subject to the other provisions of this Article XI). If the indemnifying party rejects any portion of such claim, the indemnified party will be free to seek enforcement of its rights to indemnification under this Agreement.

**SECTION 11.6. *LIMITATION OF LIABILITIES.*** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT WHICH MAY BE TO THE CONTRARY, NEITHER ANY PARTY NOR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES OR AGENTS SHALL BE LIABLE TO ANY OTHER PARTY OR ITS RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES OR AGENTS FOR, AND THE TERM "DAMAGES" FOR PURPOSES OF ARTICLE XI, SHALL NOT INCLUDE, CONSEQUENTIAL (OTHER THAN FORESEEABLE DIMINUTION IN VALUE), TREBLE, EXEMPLARY OR PUNITIVE DAMAGES OF ANY TYPE UNDER ANY CIRCUMSTANCES (EXCEPT FOR SUCH DAMAGES OWED TO A THIRD PARTY) REGARDLESS OF WHETHER SUCH DAMAGES MAY BE AVAILABLE UNDER TEXAS OR DELAWARE LAW, THE LAW OF ANY OTHER STATE OR JURISDICTION, OR FEDERAL LAW.

**SECTION 11.7. *NEGLIGENCE.*** THE INDEMNIFICATION PROVIDED IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT NEGLIGENCE OR STRICT LIABILITY OF THE PERSON ENTITLED TO INDEMNIFICATION HEREUNDER IS ALLEGED OR PROVEN.

**SECTION 11.8. *Exclusivity.*** From and after the Closing Date, indemnification pursuant to this Article XI shall be the sole and exclusive remedy of any Indemnified Party for any breach of any representation, warranty, covenant or other agreement herein, whether such claim may be asserted as a breach of contract, tort, statute or otherwise, except for fraud or willful misconduct, and except for injunctive relief and specific performance in respect of the obligations set forth in Sections 5.1, 5.2, 5.3 and 6.1.

**SECTION 11.9. *Mitigation.*** If the amount of any Damages, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage other than insurance of Atmos (in the case of a claim by any Atmos Indemnified Person) or WMI, Woodward or Kifer (in the case of a claim by any Woodward Indemnified Person), or pursuant to any claim, recovery, settlement or

payment by or against any other entity other than an insurance carrier of Atmos or WMI, Woodward or Kifer, as the case may be, the amount of such reduction, less any costs, expense or premiums incurred in connection therewith, will promptly be repaid by the indemnified party to the indemnifying party against any such third party in respect of the Damages to which the indemnity payment relates; provided, however, that, until the indemnified party recovers full payment of its Damages, any and all claims of the indemnifying party against any such third party on account of such indemnity payment is hereby made expressly subordinate and subject in right of payment to the indemnified party's rights against such third party.

SECTION 11.10. *Effect on Materiality.* For the purposes of this Article XI, once a determination has been made that a specific breach of a representation, warranty, covenant or agreement has occurred for purposes of the indemnification obligation hereunder, the calculation of Damages with respect to such specific breach shall be made without regard to any other limitation or qualification as to materiality set forth in such representation, warranty, covenant or agreement.

SECTION 11.11. *Other Matters.* The parties acknowledge that the intended effect of this Agreement and the transactions contemplated hereby is the acquisition by Atmos through its Affiliates of the equity of the LLC not currently owned by Energy, without incurring any obligation or liability of WMI other than the Assumed Obligations, and not to provide Atmos or its Affiliates with any right of recovery as to the interest in the LLC already held by Energy as of the date hereof or immediately prior to the Closing Date on account of the representations and warranties, covenants or indemnities of Woodward, Kifer or WMI made in this Agreement or any document executed by them in connection with the Closing. In addition, the parties also acknowledge that any right of recovery with respect to a representation or warranty made in this Agreement or any document executed in connection with the Closing requires the reasonable reliance thereon of the indemnified party to which such representation or warranty was made.

SECTION 11.12. *Election to Deliver Common Stock.* WMI, Woodward and Kifer shall have the option to elect to pay any amount owing in respect of the Certain Indemnifiable Claims (and not in respect of any other claims) by delivery of shares of Common Stock, valued for these purposes at the Trading Value as of the date of such delivery.

SECTION 11.13. *Certain Accounting Policies.* The parties agree that, notwithstanding anything to the contrary in this Agreement, no representation or warranty of WMI, Woodward or Kifer shall be breached, nor shall WMI, Woodward or Kifer be obligated to make any payment under Article XI with respect thereto, by virtue of the tax accounting principles followed by the LLC that were approved by Energy as a member of the LLC or the manager of the LLC appointed by Energy.

## ARTICLE XII. MISCELLANEOUS

SECTION 12.1. *Definitions.* For purposes of this Agreement, the following terms used herein shall have the meanings set forth below:

"Acquired Assets" has the meaning as set forth in Section A.

"Affiliate" means, when used with respect to any Person, any other Person at the time directly or indirectly controlling, controlled by or under direct or indirect common control with, such Person. The term "control" as used herein means the power to direct or cause the direction of the management or policies of such Person, whether by contract or otherwise.

"Agreement" means this Agreement, as the same may be amended or supplemented from time to time, together with the schedules hereto.

"Ancillary Agreements" means the Registration Rights Agreement, the assignments contemplated by Section 5.3, and any additional instrument or agreement delivered pursuant to Section 9.2.

"Assumed Obligations" has the meaning set forth in Section G.

"Atmos Entities" means Atmos and Energy.

"Atmos SEC Reports" has the meaning set forth in Section 3.6(a).

"Bank of America Facility" means (i) the Credit Agreement providing for an uncommitted borrowing base demand credit facility in the aggregate amount of up to \$100,000,000 with Bank of America, N.A., as agent, currently being negotiated by the LLC, in the form finally authorized and executed and delivered by the LLC, and any amendments thereto, and all guaranties and other agreements executed and delivered to such agent and the banks parties thereto in connection therewith or (ii) such other credit facility entered into from time to time prior to the Closing by the LLC with Bank of America, N.A., or any other financial institution.

"Base Shares" has the meaning set forth in Section B.

"Business Day" means a day other than a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close in Dallas or Houston, Texas.

"Change in Control" means any of the following events: any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) becomes, directly or indirectly, the "beneficial owner" (as defined in Rules 13d-3 (other than subsection (d) thereof) and 13d-5 under the Exchange Act), by way of merger, consolidation or otherwise of 40% or more of the voting power of Atmos.

"Closing" has the meaning set forth in Section 9.1.

"Closing Date" has the meaning set forth in Section 9.1.

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

"Common Stock" has the meaning set forth in the preamble hereof.

"Cumulative Shares" has the meaning set forth in Section B.

"Employee Benefit Arrangement" means any employee benefit, fringe benefit, compensation, or other plan, policy, agreement, or arrangement that is not an employee benefit plan within the meaning of Section 3(3) of ERISA but which (i) provides compensation or benefits to any one or more of the current or former directors, officers or other employees of WMI, the LLC or any Group Member, such as a bonus, incentive, stock purchase or stock appreciation rights plan, or any employment or consulting agreement, any termination or plant closing program, or any change in control arrangement, or (i) with respect to which WMI, the LLC, or any Group Member has any liability or obligation or is otherwise bound.

"Environmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders and decrees now or hereafter enacted, promulgated or amended, of the United States, the states, the counties, the cities or any other political subdivisions in which real property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over WMI or the LLC, any real property or the use of the real property owned or used by either of them, relating to pollution, the protection or regulation of human health, natural resources or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water, land or soil).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Assets" has the meaning set forth in Section A.

"Financial Statements" has the meaning set forth in Section 1.9(a).

"Governmental Authorizations" has the meaning set forth in Section 1.1.

"Governmental Body" means any domestic or foreign national, state or local government, any subdivision, agency, board, commission, bureau or other instrumentality or authority thereof, or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder.

"Group Member" means any member of any "affiliated service group," as defined in Section 414(m) of the Code, that includes WMI or the LLC; any member of any "controlled group of corporations," as defined by Section 414(b) of the Code, that includes WMI or the LLC; or any member of any group of "trades or businesses under common control," as defined in Section 414(c) of the Code, that includes WMI or the LLC; provided that "Group Member" does not include the Atmos Entities or any of their respective Affiliates.

"Hart-Scott-Rodino Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Hazardous Material" means any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (42 U.S.C. §

9601 et M.) or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) ("RCRA") or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); (iv) gasoline, diesel fuel or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; or (vii) radon gas; and any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements or the common law, or any other applicable laws. Hazardous Materials shall include, without limitation, any substance, the presence of which (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on any real property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on any real property or adjacent property; or (C) which, if it emanated or migrated from the real property, could constitute a trespass.

"Included Shares" has the meaning set forth in Section B.

"IRS" means the Internal Revenue Service.

"Knowledge" or "Known" means, with respect to any Person, such Person's actual and conscious knowledge, after reasonably inquiry of the management and employees of such Person and its Affiliates who are the individuals generally responsible for the subject matters to which the knowledge is pertinent.

"Knowledge of Atmos" means the Knowledge of the Atmos Entities.

"Knowledge of WMI" means the Knowledge of WMI, Woodward and Kifer.

"LLC Documents" means the Certificate of Formation of the LLC filed with the Secretary of State of Delaware on January 23, 1995, the Limited Liability Company Agreement of the LLC dated as of May 1, 1995, as amended, and the Transfer Restriction Agreement.

"LLC Membership Interests" means the units of membership interest in the LLC.

"Long Position" means the aggregate number of MMBTUs of natural gas which are either held in inventory by a Person or which a Person has contracted to purchase (whether by purchase of a contract on a commodities exchange or otherwise), or which a Person will receive on exchange or the notional quantity under a swap contract including all option contracts representing the obligation of a Person to purchase natural gas at the option of a third party, and in each case, for which a fixed purchase price has been set. Long Positions shall be expressed as a positive number.

"Material Adverse Effect" means a material adverse effect on the operations, properties, condition (financial or otherwise), assets or liabilities of the designated party or parties provided that the foregoing shall not include any material adverse effect attributable to (a) factors affecting such party's industry generally, (b) general national, regional or local economic or financial conditions, (c) changes in governmental or legislative laws, rules or regulations, or (d) contracts (other than agreements or consents settling any liability, obligation or claim) approved by the Board of Managers of the LLC by an affirmative vote that includes managers appointed by

Energy after full and fair disclosure of all material information in respect thereof to such board by management of the LLC.

"Net Position" means the sum of all Long Positions and Short Positions.

"Non-Competition Area" has the meaning set forth in Section 5.2(a).

"Non-Competition Period" has the meaning set forth in Section 5.2(a).

"Other Documents" has the meaning set forth in Section 2.3(a).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Permitted Encumbrance" has the meaning set forth in Section 1.12.

"Person" means any corporation, association, partnership, limited liability company, organization, business, individual, trust or a Governmental Body.

"Plan" means at any time-any employee benefit plan as defined in Section 3(3) of ERISA (i) which is either (1) maintained by WMI, the LLC or any Group Member, or maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which any of WMI, the LLC or any Group Member is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions, or (2) with respect to which WMI, the LLC or any Group Member has any liability or obligation or is otherwise bound.

"Prorata" means prorata in accordance with the ownership of WMI Stock and, therefore, is 59% as to Woodward and 41% as to Kifer.

"Purchase Consideration" has the meaning set forth in Section B.

"Registration Rights Agreement" has the meaning set forth in Section 6.3.

"Retained Liabilities" shall have the meaning set forth in Section G.

"Securities Act" means the Securities Act of 1933, as amended.

"Shares" has the meaning set forth in Section 2.1.

"Short Position" means the aggregate number of MMBTUs of which a Person has contracted to sell (whether by sale of a contract on a commodities exchange or otherwise) or deliver on exchange or under a swap contract, including all option contracts representing the obligation of a Person to sell natural gas at the option of a third party and in each case for which a fixed sales price has been set. Short Positions shall be expressed as a negative number.

"Subsidiary" with respect to any entity ("parent") means any entity, corporation, firm, association or trust of which such parent, at the time in respect of which such term is used, (a) owns directly or indirectly more than fifty percent (50%) of the equity or beneficial interest, on a consolidated basis, and (b) owns directly or controls with power to vote, indirectly through one

or more Subsidiaries, shares of equity or beneficial interest having the power to cast at least a majority of the votes entitled to be cast for the election of the directors, trustees, managers or other officials having powers analogous to those of directors of a corporation.

"Tax Agency" has the meaning set forth in Section 7.6(a).

"Tax Benefit" shall mean any refund, credit or actual reduction in otherwise required Tax payments including any interest payable thereon. Any Tax Benefit shall be computed net of any related Tax cost (which shall be computed in the same manner in which Tax Benefits are otherwise computed pursuant to this definition).

"Taxes" shall mean all taxes, however denominated, including any interest, penalties or other additions to tax, including any transferee or secondary liability in respect of any tax, whether imposed by law, contractual agreement or otherwise, that may become payable in respect thereof, imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and state income taxes), real property gains taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, PBGC premiums and other governmental charges, value added, alternative minimum and other obligations of the same or of a similar nature to any of the foregoing, which a person or entity is required to pay, withhold or collect.

"Tax Returns" shall mean all reports, estimates, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes or the determination, assessment or collection of any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties, and any amendments or supplements to any of the foregoing.

"Transfer Restriction Agreement" means that certain Transfer Restriction Agreement of the LLC dated as of May 1, 1995 among the LLC, Energy, WMI, Woodward and Kifer, as amended.

"WMI Shareholders' Agreement" means that certain WMI Shareholders' Agreement dated March 1, 1999, among WMI, Woodward and Kifer.

"WMI Stock" has the meaning set forth in Section 1.3.

SECTION 12.2. *Survival of Representations, Warranties and Agreements.* The representations, warranties and agreements in this Agreement shall survive the Closing Date and any investigation by the parties hereto, except that (i) the representations and warranties of WMI, Woodward and Kifer set forth in this Agreement or any document entered into in connection herewith (other than those in or in respect of Sections 1.3, 1.14 and 2.4) shall terminate on the expiration of eighteen (18) months after the Closing Date; and (ii) the agreements set forth in this Agreement or any document entered into in connection herewith shall survive the Closing indefinitely.



SECTION 12.3. *Notices.* All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered or mailed if delivered personally or by facsimile or mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to the Atmos Entities:

Atmos Energy Corporation  
1800 Three Lincoln Centre  
5430 LBJ Freeway  
Dallas, Texas 75240  
Attention: Mr. John P. Reddy  
Facsimile: (972) 855-3793

With a copy to:

Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, Texas 75201  
Attention: Mr. Irwin Sentilles III  
Facsimile: (214) 698-3100

(b) If to WMI, Woodward or Kifer:

Woodward Marketing, Inc.  
11251 Northwest Freeway, Suite 400  
Houston, Texas 77092  
Attention: Mr. J.D. Woodward and James Kifer  
Facsimile: (713) 688-5124

With a copy to:

Douglas K. Eyberg, Esq.  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
1000 Louisiana, Suite 1400  
Houston, Texas 77002  
Facsimile: (713) 287-2100

SECTION 12.4. *Assignment.* This Agreement is not assignable by any of the parties hereto; provided that Woodward and Kifer shall be permitted, in conjunction with a transfer of shares of WMI Stock to a trust or other entity created for estate planning purposes, to assign a corresponding portion of their respective rights under this Agreement to such trust or other entity prior to the Closing and to such extent, after any such permitted assignment the terms "Woodward" and "Kifer" shall also refer to such permitted assignees; provided that such assignment shall not relieve Woodward or Kifer of their respective obligations hereunder nor impose any obligations under Article XI on such permitted assignees.

SECTION 12.5. *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, an other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 12.6. *Parties in Interest.* This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 12.7. *Entire Agreement.* This Agreement, together with the Ancillary Agreements, constitutes the entire agreement and supersedes all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and is not intended to confer upon any other person any rights or remedies hereunder.

SECTION 12.8. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

SECTION 12.9. *Construction; Headings.* The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In construing this Agreement:

- (a) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;
- (b) the word "includes" and its derivatives means "includes, but is not limited to," and corresponding derivative expressions;
- (c) a defined term has its defined meaning throughout this Agreement, and each exhibit, attachment, and schedule to this Agreement, regardless of whether it appears before or after the place where it is defined;
- (d) the plural shall be deemed to include the singular, and vice versa;
- (e) each gender shall be deemed to include the other genders;
- (f) all references to prices, values or monetary amounts refer to United States dollars;

(g) all references to articles, sections, paragraphs, clauses, exhibits, attachments or schedules refer to articles, sections, paragraphs and clauses of this Agreement, and to exhibits, attachments or schedules attached to this Agreement, unless expressly provided otherwise;

(h) each schedule to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any schedule, the provisions of the main body of this Agreement shall prevail;

(i) the words "this Agreement," "herein," "hereof," "hereby," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision, unless expressly so limited; and

(j) the word "or" is not exclusive.

SECTION 12.10. Incorporation of Exhibits. The Exhibits hereto are incorporated herein by reference and made a part hereof for all purposes.

SECTION 12.11. *Counterparts*. This Agreement may be executed in counterparts, each of which will be an original, but all of which together will constitute one and the same agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Atmos Entities, WMI, Woodward and Kifer have executed this Agreement as of the date first written above by, in the case of Atmos, Energy and WMI, their respective officers thereunto duly authorized.

ATMOS ENERGY CORPORATION

By: Robert W. Best  
Robert W. Best  
Chairman of the Board,  
President and CEO

ATMOS ENERGY MARKETING, LLC

By: Robert W. Best  
Robert W. Best  
President

WOODWARD MARKETING, INC.

By: \_\_\_\_\_  
J.D. Woodward, III  
President and Chairman of the Board

\_\_\_\_\_  
J.D. Woodward, III

\_\_\_\_\_  
Linda Lee Woodward

\_\_\_\_\_  
James Kifer

\_\_\_\_\_  
Rita B. Kifer

IN WITNESS WHEREOF, the Atmos Entities, WMI, Woodward and Kifer have executed this Agreement as of the date first written above by, in the case of Atmos, Energy and WMI, their respective officers thereunto duly authorized.

ATMOS ENERGY CORPORATION

By: \_\_\_\_\_  
Robert W. Best  
Chairman of the Board,  
President and CEO

ATMOS ENERGY MARKETING, LLC

By: \_\_\_\_\_  
Robert W. Best  
President

WOODWARD MARKETING, INC.

By: \_\_\_\_\_  
J.D. Woodward, III  
President and Chairman of the Board

\_\_\_\_\_  
J.D. Woodward, III  
Linda Lee Woodward  
Linda Lee Woodward

\_\_\_\_\_  
James Kifer  
Rita B. Kifer  
Rita B. Kifer

## EXHIBITS

Exhibit A	-	WMI Disclosure Schedule
Exhibit B	-	Atmos Disclosure Schedule
Exhibit C	-	Woodward Employment Terms
Exhibit D	-	Kifer Employment Terms
Exhibit E	-	Registration Rights Agreement
Exhibit F	-	Lease Terms
Exhibit G	-	Opinion of Counsel for WMI and Woodward and Kifer
Exhibit H	-	Opinion of Counsel for Atmos Entities

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